458.

SUPREME COURT OF THE UNITED STATES.

No. 68.

JOHN DEN, LESSEE OF CHAS. C. SCOTT AND OTHERS, PLAINTIFFS,

VERSUS

THOMAS REID, JR., AND OTHERS, DEFENDANTS.

CERTIFICATE OF DIVISION OF OPINION FROM THE CIRCUIT COURT U. S. FOR THE DISTRICT OF WEST TENNESSEE.

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[*Preamble.*]

DISTRICT OF WEST TENNESSEE, *to wit.*

Pleas before the honorables John McLean and Morgan W. Brown, judges of the seventh circuit of the United States of America, in and for the district of West Tennessee, at the

court house in the town of Nashville, at the September term of said court, in the year one thousand eight hundred and thirty-four, between

[*Parties.*]

John Den, lessee of Charles Christopher Scott, Edward W. Clark, James Hendricks, and Elizabeth his wife, Jesse Josslin, and Susan his wife, and Mary Clark, Samuel Griffin, William S. Griffin, Charlotte Griffin, John H. Griffin, and Mitchell, Elizabeth Preston, Margaret Preston, & Doshia Preston, Bowker Preston, Richard Hobson, and Louisa his wife, Richard S. West, Jordan A. West, John H. West, Margaret Eliza West, and Smithson H. West, plaintiff,

and

Thomas Reid, jr., Thomas F. Butler, William Collins, Willie T. Burrus, Joseph Hanna, James Hanna, and Wesley Howard, defendants.

Be it remembered, that, heretofore, to wit, on the 20th day of May, 1831, Thomas Reid, jr., and the other defendants above named, were attached to answer John Den, lessee of Charles Christopher Scott, and the others above named, of a plea of trespass; wherefore, they broke and entered the close of him, the said John Den, and ejected and drove him therefrom, to his damage one thousand dollars.

With the writ under which said defendants were arrested, there issued a declaration in ejectment, which is in the words following, to wit:

[*Declaration.*]

Seventh circuit of the United States, } to wit.
District of West Tennessee, }

John Den, who is a citizen of the State of Virginia, by attorney, complains of Richard Fen, who is a citizen of the State of Tennessee, in custody, &c. in a plea of trespass, &c.: For that, Charles Christopher Scott, Edward W. Clark, James Hendricks, and Elizabeth his wife, Jesse Josslin, and Susan his wife, and Mary Clark, Samuel Griffin, William S. Griffin, Charlotte Griffin, John H. Griffin, and Mitchell, Elizabeth Preston, Margaret Preston, and Doshia Preston, Bowker Preston, Richard Hobson, and Louisa, his wife, Richard S. West, Jordan A. West, John H. West, Margaret Eliza West, and Smithson H. West, who are citizens of the said State of Virginia, on the 1st day of October, 1830, at the district afore-said, severally demised and to farm, let unto the said John Den, divers messuages and a certain tract of land, containing five thousand acres, lying in the district aforesaid, and bounded as follows, to wit: situated in the middle district, on the west side of Richland creek of Elk river, and about one mile and three quarters from the same; beginning at a black walnut, Thomas Polk's southwest corner, and runs west two hundred and twenty chains, along or near the southern boundary of the State of Tennessee, to a honey locust; then north two hundred and twenty chains thirty links to a black oak; then

east two hundred and twenty-six poles to an ash and honey locust, said Thomas Polk's northwest corner, (said Polk's land, including both sides of Richland creek;) then south, with said Polk's line, two hundred and twenty-seven chains thirty links to the beginning; being the land included in grant No. 152, issued by the State of North Carolina to Stockley Donelson, on the 7th of April, 1790, with the appurtenances thereto belonging: To have and to hold the said messuages and tract or parcel of land, with the appurtenances unto the said John Den, and his assigns, from the 1st day of October, in the year aforesaid, for the term of ten years, from thence next ensuing, and fully to be complete and ended. By virtue of which demises, said John Den entered into said tenements with the appurtenances, and was thereof possessed, until Richard Fen afterwards, on the 10th day of October, in the year aforesaid, with force and arms, &c., entered into said demised premises, in and upon the possession of the said John Den, and ejected, drove out, and amoved the said John Den from his said farm, his term aforesaid not being yet ended, and still keeps out the said John Den so amoved; and said Richard Fen then and there other wrongs and enormities to the said John Den did against the peace of the United States, and to the damage of the said John Den, one thousand dollars; and thereupon, he brings suit, and there are pledges to prosecute, &c.

THOS. WASHINGTON,
Attorney for plaintiffs.

[*Notice.*]

Messrs. Thomas Reid, jr., Thomas Butler, William Collins, Willie T. Burrus, Joseph Hanna, James Hanna, and Wesley Howard, citizens of the State of Tennessee:

I am informed that you are in possession of, or claim title to, the demised premises in the above declaration mentioned, or some part thereof; and I, being sued in this action as casual ejector, and having no claim or title to the same, do advise you to appear before the circuit court of the United States in the seventh circuit, in the district of West Tennessee, at Nashville, on the 1st day in June next, personally, or by some attorney of that court, and then and there, by a rule to be made by the same court, to cause yourselves to be made defendants in my stead, or I shall suffer judgment to be entered against me, and you will be turned out of possession.

Yours, &c.

RICH'D FEN.

[*Endorsement and Marshal's return.*]

Endorsements to wit: "Issued 1st April, 1831. Came to hand 16th May, 1831. I delivered a copy of the within declaration and notice to James Hanna, Joseph Hanna, Thomas Reed, jr., Thomas F. Butler, William Collins, Willie T. Burrus, and Wesley Howard, May 20th, 1831.

S. B. MARSHALL, *Mar.*, W. T."

[*Plea.*]

And at September, 1831, the following memorandum was en

[*Grant from North Carolina to Donelson.*]

State of North Carolina.

No. 152. Know ye, that we have granted unto Stockley Donelson five thousand acres of land, in the middle district, on the west side of Richland creek of Elk river, and about one mile and three quarters from the same; beginning at a black walnut, Thomas Polk's southwest corner, and runs west two hundred and twenty chains, along or near the southern boundary of state to a honey locust; then north two hundred and twenty-seven chains, thirty links to a black oak; then east two hundred and twenty poles to an ash and honey locust; said Thomas Polk's northwest corner, said Polk's land including sides of Richland creek; then south with said Polk's line two hundred and twenty-seven chains, thirty links to the beginning; to hold to the said Stockley Donelson, his heirs, and assigns forever. Dated 7th day of April, 1790.

ALEX. MARTIN.

J. GLASGOW, *Secretary*.

A true copy, WILL. WHITE, Sec."

[*Authentication of grant to Donelson.*]

State of North Carolina.

To all whom these presents shall come. It is hereby certified and made known, that Will. White, who has signed the copies hereto annexed, was at the time of signing the same, and is now secretary of state for this State, and that full faith and credit are due and ought to be given to his official acts as such.

In testimony whereof, I, David Stone, Governor of the State of North Carolina, have caused the great seal of the said State to be affixed to these presents, and signed the [L. S.] same with my hand at Raleigh, this fourth day of September, in the year of our Lord, one thousand eight hundred and ten, and 35th of the independence of the United States.

DAVID STONE.

SIMON A. BRYAN, *P. Sec'y*.

[*Registration of certificate.*]

State of Tennessee, Giles county.

I, Jesse Westmoreland, register of said county, do hereby certify that the above certificate is duly registered in my office in book A, and page 99, &c.

JESSE WESTMORELAND, R. G. C.

December 10, 1810.

[*Registration of grant, &c.*]

State of Tennessee, Giles county, }
Register's Office. }

I, Fountain Lester, register of said county, do hereby certify that the within copy of grant, and the certificate of Will. White, sec., and also annexed certificate of David Stone, are duly registered in my office in book C, page 95. Given under my hand, this third day of June, 1817.

FOUNTAIN LESTER, *Reg*."

[*Certificate of division, &c. continued.*]

The plaintiff read this grant in evidence to the jury, and then offered to read in evidence, likewise, a deed from Stockly Donelson to John Hook, the ancestor of the lessors of the plaintiff for the said tract of land, which deed and its probates and certificate of registration are in the following words and figures, to wit:

[*Deed from Donelson to Hook.*]

This indenture, made this 24th day of March, one thousand seven hundred and ninety-one, between Stockly Donelson, of Hawkins county, of the territory of the United States of America, south of the River Ohio, late of the State of North Carolina, of the one part, and John Hook, of Franklin county, and State of Virginia, of the other part, witnesseth, that the said Stokely Donelson, for and in consideration of the sum of six hundred and twenty-five pounds, current money of Virginia, to him in hand paid, the receipt whereof, he, the said Stokeley Donelson, do hereby acknowledge, have granted, bargained, and sold, and by these presents do grant, bargain, and sell, unto the said John Hook, his heirs, executors, administrators, or assigns, for ever, a tract of land containing five thousand acres, lying and being in the territory of the United States of America, south of the river Ohio, late of the State of North Carolina, in the middle district of the western territory, on the west side of Richland creek of Elk river, about one mile and three quarters from said Elk river; beginning at a black walnut, Thomas Polk's south west corner, and runs west two hundred and twenty chains along or near the southern boundary of said State to a honey locust, thence north two hundred and twenty chains thirty links to a black oak, thence east two hundred and twenty chains to an ash and honey locust, said Thomas Polk's northwest corner, (said Polk's land including both sides of Richland creek,) thence south with said Polk's line two hundred and twenty-seven chains thirty links to the beginning; together with all the privileges and appurtenances thereunto belonging or in any ways appertaining; to have and to hold the aforesaid tract of land, together with all the appurtenances unto him, the said John Hook, his heirs or assigns forever; he, the said Stokely Donelson, by these presents, will warrant and forever defend the said granted land and premises, free from the just claim or demand of all persons whomsoever.

In witness whereof, the said Stokely Donelson hath hereunto set his hand and seal, date above written.

STOCKLEY DONELSON, [L. S.]

Signed, sealed, and delivered in the presence of
PHILEMON SMITH,
JAMES WRAY,
JOHN HALE,
his
DAVID × MORGAN.
mark.

[*Memorandums of livery and seizen.*]

Memo. That on the 24th day of March, one thousand seven hundred and ninety-one, quiet and peaceable possession of the

of the within mentioned land and premises was held by the within named Stokeley Donelson, and by him delivered unto the within named John Hook, according to the usual form of livery and seizen, and according to the true force and effect of the within deed.

STOCKLY DONELSON. [L. S.]

Signed, sealed, and delivered in the presence of
PHILEMON SMITH,
JAMES WRAY,
JOHN HALE,
his
DAVID + MORGAN,
mark.

[*Acknowledgment before Judge.*]

This day, before me, David Campbell, one of the judges for the State of Tennessee, came Stockley Donelson, and acknowledged in due form of law, the execution of the within instrument of writing to be his act and deed. March 29th, 1799.

Let it be registered.

DAVID CAMPBELL.

[*Same before witnesses.*]

Hailsford, Franklin county, Virginia, May 10th, 1798.

Stockley Donelson, now a citizen of Raleigh, North Carolina, again acknowledged the within deed, also the memorandum on the back thereof, to be his act and deed. In testimony wherof, we, the witnesses attest.

Witnesses, to wit:
CHARLES SIMMONS,
JOB MEADOW,
JAMES GREEN,
WILLIAM SMITH,
BOWKER PRESTON,
JOHN MEADOR,
WILLIAM DRAKE,
ROBERT CHILDES.

[*Probate.*]

At a court held for Franklin county, in July, 1798, the within indenture, together with the memorandum of livery and seizen was proved by the oaths of the last subscribed witnesses to be the respective acts and deeds of Stockley Donelson, and the same was admitted to record, and ordered to be certified.

Test: JAMES C. CALLOWAY, C. F. C.

[*Certificate of presiding justice.*]

Virginia, to wit:

I, Thomas, Hale, presiding magistrate of the county of Franklin, do hereby certify that James Calloway, who attests the above record, is clerk of the said county, and that due faith and credit is and ought to be given to his signature, throughout the United States of America, and wheresoever these presents shall go. Given under my hand, this 7th day of August, 1798.

THOMAS HALE.

[*Registration.*]

State of Tennessee, Davidson county, Register's office.

The annexed deed of conveyance and probate, taken by David Campbell, esquire, is duly registered in book D, page 61. April 16th, 1799.

THOMAS MOLLOY, *Reg'r.*

[*Certificate of division of opinion, continued.*]

The counsel for the defendants objected to the reading of this deed as evidence to the jury, but the court permitted it to be read, subject, however, to be rejected, or taken from the jury, if the court should finally be opinion that it was inadmissible. It was proved and admitted, that the land in controversy, which is contained in the grant to Donelson, being the same land contained in the said deed from him to Hook, lies in what is now Giles county, in the State of Tennessee; that, at the time said deed from Donelson to Hook was executed, and also when the same was proved and registered, the land covered by said deed was situated within the Indian boundary, in the chartered limits of the State of Tennessee, but not within the bounds of any county, the Indian title thereto not having been extinguished; that the Indian title to the district of country including said land was extinguished by the treaty of Shelby and Jackson, formed with the Chickasaw tribe of Indians in October, 1818, and ratified in January, 1819; that, by an act of Legislature of Tennessee, passed on the 14th day of November, 1809, the county of Giles was established, with the following boundaries, to wit: Beginning at the southeast corner of Maury county; thence due south to the southern boundary of the State; thence west so far as to form a constitutional county; thence north to the line of Maury county, and with said last mentioned line to the beginning; which act was to be in force from and after the first day of January, 1810; which bounds of the county of Giles include the land in controversy. Upon the foregoing state of facts, the counsel for the defendants moved the court to reject said deed of Donelson to Hook from the jury, because, as was contended by them, the said deed, so proved and registered, was insufficient to have passed the legal title according to the laws of Tennessee; on which question, the opinions of the said judges were opposed to each other.

The defendants offered to read, as evidence to the jury, a deed from the said Stockley Donelson to James Conner for the same land; which deed, probate thereof, and certificate of its registration, are in the following words and figures, to wit:

[*Deed from Donelson to Conner.*]

This indenture, made this eighth day of December, in the year of our Lord one thousand seven hundred and ninety-seven, between Stockley Donelson, of the county of Wake, and State of North Carolina, of the one part, and James Conner, of the county of Mecklenburg, and State aforesaid, of the other part, witnesseth, that for and in consideration sum of one thousand pounds, current money of the State aforesaid, to me in hand paid, the receipt whereof is hereby acknowledged, hath bargained, sold, and by these presents doth bargain, sell, enfeoff, and convey, unto the

said James Conner, his heirs, executors, and assigns, forever, a certain tract or parcel of land, containing five thousand acres, be the same more or less, lying upon the waters of Elk river, on the west side of Richland creek, in the middle district in the State of Tennessee, beginning about one mile and three quarters from the same, at a black walnut, Thomas Polk's southwest corner, and runs west two hundred and twenty chains, along or near the southern boundary of said State, to a honey locust; thence north two hundred and twenty-seven chains and thirty links to a black oak; thence east two hundred and chains to an ash and honey locust, said Thomas Polk's northwest corner, said Polk's land, including both sides Richland; thence south with said Polk's line 227 chains and 30 links to the beginning, together with all waters, water courses, profits, hereditaments, and appurtenances thereunto, or in any wise belonging; to the only proper use and behoof of him, the said James Conner, his heirs, executors, administrators, and assigns, forever: and I, the said Stockley Donelson, for myself, my heirs, administrators, and assigns, doth warrant and forever defend the above premises of five thousand acres of land, lying and situate as above, to the said James Conner, his heirs and assigns, from the lawful claim of any person or persons whatsoever, agreeable to the laws of North Carolina.

In witness whereof, the said Stockley Donelson hath hereunto set his hand, and affixed his seal, the day and year above written.

STOCKLEY DONELSON. [L. S.]

Signed, sealed, and delivered in presence of us.
MATT. BRANDON.
RICH'D D. BARRY.

[*Probate.*]

North Carolina, Rowan county, August 23d, 1809.

Then the due and fair execution of the within deed was duly proved before me, Francis Locke, one of the judges of the superior courts of law and courts of equity for the State aforesaid, by the oath of Matthew Brandon, a subscribing witness thereto. Let it be registered.

FRANCIS LOCKE, *J. S. C. L. & C.*

[*Registration.*]

State of Tennessee, Giles county, Register's office.

I, Fountain Lester, register of said county, do hereby certify that the within deed and foregoing certificate are duly registered in my office in book C, pages 96 and 97. Given under my hand this 3d day of June, 1817.

FOUNTAIN LESTER, *Reg.*

The counsel for the plaintiff objected to the reading of this deed in evidence to the jury: 1st. Because the same had not been proved as authorized by any law. 2d. Because the same had been registered, not according to the provisions of any law in existence at the time the registration thereof took place. 3d. Because the said probate and registration thereof had not been cured by any subsequent law, so as either to make the said deed operate to pass title from the date of its execution, or from the date of its registration, or effectual, from any other period, for the purpose

of overreaching the prior deed of Donelson to Hook. The said deed was permitted to go to the jury, subject, however, to final rejection, upon further argument to be had thereon.

The defendants, in order to prove that they were purchasers under James Conner, offered to read deeds from James Conner to them for the land in controversy; but the court was of opinion that the deeds were inoperative to pass the legal interest of James Conner, from want of proof of the power of attorney from James Conner, under and by virtue of which they purported to be executed, and were otherwise insufficient and informal; which deeds are in the words and figures, following, to wit:

[*Deed from Conner to Reed and Butler for* 4,500 *acres.*]

This indenture, made this first day of June, in the year of our Lord one thousand eight hundred and twenty-two, between James Conner, of the county of Mecklenburg, and State of North Carolina, of the one part, and Thomas Reid, jr., and John Butler, of the county of Giles, and State of Tennessee, of the other part, witnesseth, that for and in consideration of the sum of two thousand five hundred dollars, in hand paid, the receipt whereof is hereby acknowledged, the said James Conner hath bargained, sold, set over, released, conveyed, and confirmed, and by these presents doth bargain, sell, set over, release, convey, and confirm, to the said Thomas Reid, jr., and John Butler, their heirs, &c., forever, a certain piece or parcel of land, lying in the county of Giles, upon Richland creek, being a part of a tract of land granted by the State of North Carolina to Stokley Donnelson, and by him conveyed to James Conner by deed dated 8th December, 1797, and containing, by estimation, four thousand five hundred acres, be the same more or less, and bounded as follows, to wit: Beginning at a black walnut, Thomas Polk's southwest corner, and runs west 440 poles to a stake; thence N. 240 poles to a stake; thence west 340 poles, running by a black walnut, Hanna's northeast corner of survey No. 1, to a stake, the southeast corner of Hanna's survey No. 2; thence with the east boundary of said survey, No. 2, No. 320 poles to a gum, the northeast corner of survey No. 2; thence west 96 poles to a stake on the west boundary line of said five thousand tract; thence N. 350 poles to a black oak, the northwest corner of said large survey; thence E. 880 poles to an ash and honey locust, the northeast corner, *the northeast corner*, of said large survey; thence south 910 poles to the beginning; containing four thousand five hundred acres, be the same more or less: and I, the said James Conner, do, by these presents, and for the consideration heretofore expressed, hereby covenant and agree to and with the said Thomas Reid, jun'r, and John Butler, their heirs, executors, and administrators, to warrant and forever defend the land heretofore described, and within the aforesaid boundaries, not only against the claim of myself, my heirs, executors, and administrators, but against the claim or claims of all persons whatsoever; and for the true performance of which, I bind myself, my heirs, executors,

and administrators. In witness whereof, I have hereunto, this, the day and year above, written my name, and affixed my seal.

HENRY W. M. CONNER, [L. S.]
Agent and Attorney in fact for James Conner.

In presence of—
ROBERT L. COBBS,
JAMES HANNA.

State of Tennessee, Giles county court, February term, 1824.
[*Probate.*]

I, German Lester, clerk of the court of pleas and quarter sessions, holden for the county aforesaid, do certify that then the within deed of conveyance from Henry W. M. Conner, agent and attorney in fact for James Conner, to Thomas Ried, jun., and John Butler, was produced in court, and the execution thereof proven by the oaths of Robert L. Cobb and James Hanna, (the witnesses thereto,) and ordered to be certified for registration.

In testimony whereof, I have hereunto set my hand and [L. S.] affixed the seal of said court at office in Pulaski, the 8th day of March, 1824.

GERMAN LESTER, *Clerk.*

STATE OF TENNESSEE,
——— *county Register's Office.*
[*Registration.*]

The within deed of conveyance and certificate are duly registered in this office, in Book E, pages 520 and 521, this 24th May, 1824.

FOUNTAIN LESTER.

[*Deed from Conner to Hanna for 22½ acres.*]

This indenture, made this 30th day of May, in the year of our Lord one thousand eight hundred and twenty-two, between James Conner, of the county of Mecklenburg, and State of North Carolina, of the one part, and James Hanna, of the county of Giles, and State of Tennessee, of the other part, witnesseth, that for and in consideration of the sum of forty-five dollars, in hand paid, the receipt whereof is hereby acknowledged, the said James Conner hath bargained, sold, set over, released, and confirmed, and by these presents doth bargain, sell, set over, release, and confirm, unto the said James Hanna, his heirs, executors, and administrators forever, a certain tract or parcel of land lying in Giles county, upon Buck creek, (being a part of a five thousand acre tract, entered in the name of Stokely Donelson, and by him conveyed to the said James Conner,) containing, by estimation, twenty-two acres and a half, and bounded as follows, viz.: Beginning at standing rock, marked I H, and an elm, the southwest corner of said Hanna's survey No. 1, and runs south 60 poles to a beech and white oak, the southwest corner of said five thousand survey of Stokely Donelson's; thence east with the southern boundary of said large tract 60 poles to a box elder; thence north 60 poles to a stake, on the south boundary of said Hanna's survey

No. 1; thence west to the beginning; which tract of twenty-two acres and a half, the said *the said* James Conner, for himself and his heirs, doth agree forever to warrant and defend to the said James Hanna, his heirs, executors, and administrators, from the lawful claim or claims of any person or persons whatever.

In witness whereof, I have hereunto set my hand and affixed my seal the day and year above written.

HENRY W. M. CONNER, [SEAL.]
Agent and attorney in fact for James Conner.

Signed, sealed, and delivered, in presence of us,
HEZEKIAH JONES,
ELIJAH BOYD.

State of Tennessee, Giles county court, November term, 1822.
[*Probate.*]

Then was the within deed of conveyance from James Conner to James Hanna produced in court, and the execution thereof proven by the oaths of Hezekiah Jones and Elijah Boyd, the subscribing witnesses thereto, and ordered to be certified for registration.

In testimony whereof, I, German Lester, clerk of said court, have hereunto set my hand and affixed the seal of said court at office, in the town of Pulaski, this 17th day of January, 1823.

[L. S.] GERMAN LESTER, *Clerk.*

STATE OF TENNESSEE,
Giles county, Register's Office.
[*Registration.*]

The within deed of conveyance and certificate are duly registered in this office, in Book E, pages 208 and 209, this 17th January, 1823.

FOUNTAIN LESTER, *Reg.*

[*Deed from Conner to Hanna for* 200 *acres.*]

This indenture, made this twenty-ninth day of May, in the year of our Lord one thousand and twenty-two, between James Conner, of the county of Mecklenburg, and State of North Carolina, of the one part, and James Hanna, of the county of Giles, and State of Tennessee, of the other part, witnesseth, that the said James Connor, for and in consideration of the sum of eight hundred and fifty dollars, in hand paid, the receipt whereof is hereby acknowledged, hath this day bargained, sold, set over, and released, and by these presents doth bargain, sell, set over, and release, unto the said James Hanna, a certain tract or parcel of land containing two hundred acres, lying in the county of Giles, upon Buck creek, (being a part of a tract of five thousand acres, granted by the State of North Carolina to Stokely Donelson,) beginning at a standing rock marked I H, and elm, on the west boundary of said five thousand acre tract, and runs east 180 poles to a sweet gum; thence north 180 poles, to a black walnut; thence west 180 poles, to an ash on said west line of said five thousand acre tract; thence south with said line to the beginning.

The said tract of two hundred acres, with all ways, waters, mines, and minerals, together with each and every appurtenance or appurtenances thereto in any way appertaining or belonging to the said James Conner, for himself, his heirs, executors, administrators, and assigns, doth now sell, bargain, transfer, and convey, to the proper use and benefit of the said James Hanna and his heirs forever: and to the said James Hanna, his heirs, executors, and administrators, the said James Conner, for himself and his heirs, doth warrant and defend the said tract of land from the lawful claim or claims of any person or persons whatever.

In testimony whereof, I, Henry W. M. Conner, agent and attorney in fact for the said James Conner, have hereunto set my hand and affixed my seal the day and year above written.

HENRY W. M. CONNER, [SEAL.]
Agent and attorney in fact for James Conner.

Test:
W. S. JONES,
ALFRED W. HARRIS.

[*Probate.*]

State of Tennessee, Giles county court, May term, 1822.

Then was the within deed of conveyance from James Conner, by Henry W. M. Conner, agent and attorney in fact to James Hanna, produced in court, and the execution thereof acknowledged by the said Henry W. M. Conner, agent and attorney in fact for James Conner, and ordered to be certified for registration. In testimony whereof, I, German Lester, clerk of said court, have hereunto set my hand, and affixed the seal of said court at office this 19th day of September, 1822.

GERMAN LESTER, *Clerk.*

[*Registration.*]

State of Tennessee, Giles county, Register's office.

The within deed of conveyance and certificate are duly registered in this office in book F, pages 329 and 330, this 9th day of September, 1825.

FOUNTAIN LESTER, *Register.*

[*Deed from Conner to Hanna for* 192 *acres.*]

This indenture, made this thirtieth day of May, in the year of our Lord one thousand eight hundred and twenty two, between James Conner, of the county of Mecklenburg, and State of North Carolina, of the one part, and James Hanna, of the county of Giles, and State of Tennessee, on the other part, witnesseth: that for and in consideration of the sum of two hundred dollars in hand paid, the receipt whereof is hereby acknowledged, the said James Conner hath bargained, sold, conveyed, and confirmed to the said James Hanna, his heirs and assigns forever, a certain tract of land, containing one hundred and ninety-two acres, lying in the county of Giles, and upon Buck creek, and being a part of a tract of five thousand acres, granted by the State of North Carolina to Stokely Donelson, and by him conveyed to James Conner, by deed, bearing date 1797, and bounded as follows, viz.: beginning at an ash, the northwest corner of said Hanna's survey

No. 1, and runs with the west boundary of said five thousand acres survey, north 320 poles to a stake, thence east 96 poles to a gum, thence south 320 poles to a stake on the north boundary of said Hanna's survey No. 1, thence west with said line to the beginning: which tract of one hundred and ninety-two acres, to have and to hold to the own proper use and benefit of the said Hanna, his heirs, executors, and administrators; the said James Conner, for himself and his heirs, executors, and administrators, doth warrant and defend against the claim or claims of any person or persons whatsoever. In testimony whereof, I, Henry W. M. Conner, the legal agent and attorney in fact for the said James Conner, have hereunto set my hand and affixed my seal, the day and year first above written.

HENRY W. M. CONNER, [SEAL.]
Agent and attorney in fact for James Conner.

Signed, sealed, and delivered, in presence of us.
HEZEKIAH JONES.
ELIJAH BOYD.

[*Probate.*]

State of Tennessee, Giles county court, November term, 1822.

Then was the within deed of conveyance from James Conner to James Hanna produced in court, and the execution thereof proven by the oaths of Hezekiah Jones and Elijah Boyd, the subscribing witnesses thereto, and ordered to be certified for registration. In testimony whereof, I, German Lester, clerk of said court, have hereunto set my hand, and affixed the seal [L. S.] of said court at office in the town of Pulaski, this 17th day of January, 1823.

GERMAN LESTER, *Clerk.*

[*Registration.*]

State of Tennessee, Giles county, Register's office.

The within deed of conveyance and certificate are duly registered in this office in book C, pages 248 and 249, this 10th day of February, 1823.

FOUNTAIN LESTER, *Register.*

[*Deed from Conner to Hanna for 80 acres.*]

This indenture, made this thirtieth day of May, in the year of our Lord one thousand eight hundred and twenty-two, between James Conner, of the county of Mecklenburg, and State of North Carolina, of the one part, and James Hanna, of the county of Giles, and State of Tennessee, of the other part, witnesseth: that for and in consideration of the sum of fifty-five dollars, in hand paid, the receipt whereof is hereby acknowledged, the said James Conner hath sold, bargained, conveyed, and confirmed to the said James Hanna, his heirs and assigns forever, a certain tract or parcel of land containing, by estimation, eighty acres, more or less, it being a part of a tract of land granted by the State of North Carolina to Stokeley Donelson, and by him conveyed to James Conner, by deed, bearing date 1797, and bounded as follows, viz.: beginning at a beech on the east boundary of said Hanna's survey No. 1, and runs No. 70 E., 260 poles to a black

gum, thence north 35 W., 40 poles to a chesnut, thence south 74 W., 120 poles to a stake, thence south 40 poles to a stake, thence south 80 W., 108 poles to a dogwood on the east boundary line of survey No. 1, thence south 40 poles to the beginning, which tract of eighty acres of land, with all the appurtenances thereunto belonging, the said James Conner doth, for himself and his heirs and assigns forever, warrant and defend to the own proper use and benefit of the said James Hanna, his heirs, executors, and administrators, from the lawful claim or claims of all and every persons whatever. In testimony whereof, I, Henry W. M. Conner, the agent and attorney in fact of James Conner, have hereunto set my hand and affixed my seal, the day and year first above written. HENRY W. M. CONNER, [SEAL.]

Agent and attorney in fact for James Conner.

Signed, sealed, and delivered, in presence of us.

WILLIAM H. FIELD.

THOMAS REID.

State of Tennessee, Giles county court, August term, 1832.

[*Probate.*]

Then was the within deed of conveyance from James Connor to James Hanna produced in court, and the execution thereof proven by the oaths of William H. Field and Thomas Read, the subscribing witnesses thereto, and was, thereupon, ordered to be recorded.

In testimony whereof, I, German Lester, clerk of said court, have hereunto set my hand at office this 27th of August, 1832.

GERMAN LESTER, *Clk.*

State of Tennessee,
Giles county, register's office.

[*Registration.*]

The within deed of conveyance and certificate are duly registered in this office in book J. pages 277 and 278, this 28th August, 1832. FOUNTAIN LESTER,

Register said county.

The defendants, then, to connect themselves with James Conner, and to prove that they were holding under his title, read the depositions of John Barnett and James Kimbro, which are in the words following, viz.:

John Den, lessee of Charles C. Scott and others.

vs.

Thomas Reed and others.

[*Deposition of John Barnett.*]

In the circuit court of the United States for the district of West Tennessee.

The following depositions, taken by consent, and reduced to writing by the counsel on both sides, are to be read as evidence on the trial of the above cause, unless some objection to the competency of either witness or their testimony should be discovered.

John Barnett, a witness for the plaintiff, being first examined: Question first, by plaintiff: Are you acquainted with the land in controversy, in the above suit between the above parties?

I have not a particular acquaintance with the lines of the tract, but am sufficiently acquainted with the body of the tract to know that the defendants, to wit, Thomas Reid, jr., Thomas Butler, Wm. Collins, Willie T. Burrus, Joseph Hannah, and Wesley Howard, were living on the tract.

2d. Were they, or any of them, living and residing upon the land, on the first day of April, 1831?

Answer. They were all living upon it at that time. Burrous is since dead.

3d. How long have you been acquainted with the tract?

Answer. Ever since I lived in Giles county, between twenty-one and twenty-two years ago.

4th. Who lived on the land when you first became acquainted with it?

Answer. Thomas Reed, the father of the defendant of that name, Saml. Cox, John Hamblin, and John Caldwell, and a widow Cox.

5th. How long afterwards did either and all of the persons above named, continue to live on said land from that time?

Answer. Old Mr. Reed, whose name is also Thomas, then lived on a part of the tract of five thousand acres, and his son, the present defendant, was a boy, or young man, living with him, and ever since, without any interruption, as far as I know, or believe, they having been living on the same part of said 5,000 acre tract; though old Mr. Reed, and his son Thomas, now occupy different houses, and cultivate separate parcels of the same part of said tract.

Saml. Cox did not live there long; I cannot say how long, nor do I know who succeeded him; the place at which he lived has been cultivated by several others since he left it; but who I do not recollect, nor how long by each, until since the purchase said to be made by the defendant, Reed, of Conner.

John Hamblin lived upon another part of the tract for several years after my first acquaintance with it, how many I cannot say, nor do I know who succeeded him, or occupied the place he left, from the time of his leaving until the date of the purchase from Conner.

John Caldwell continued in possession of the part occupied by him for several years; how many I cannot say, nor who succeeded him, neither do I know how long Mrs. Cox lived on the part once possessed by her, but she was succeeded by Thomas Reed, the defendant, who has tended the part of which she was in possession up to the date of the purchase from Conner.

6th. Who did the different persons above named as being in possession of different portions of said tract of land of five thousand acres, enter upon and held possession of the parts respectively claimed by them under the authority of?

Answer. I heard Hamblin say, while he was in possession of the part occupied by him, that he entered upon and held that part under one Gallaher, and I heard old Mr. Reed and his son, the defendant, say the same thing respecting the part that they occupied. This I heard them say before the commencement of this suit, before the date of the purchase from Conner, and whilst they were in possession. I know nothing of whom they entered

or held under, from my own knowledge, nor otherwise than as above stated; nor do I know in any way, under whom the others entered or held, neither do I know who Gallaher was, or what his authority over the land was, or what was his connexion with the title.

7th. Who made purchases of any part of said tract of five thousand acres from Conner, and which of the defendants have been in possession of any part since that time?

Answer. Thomas Reed, the defendant, and John Butler, father of the defendant Butler, as I have understood, purchased jointly from Conner a part of said tract of five thousand acres; also James Hanna, one of the defendants, another part. The purchases of these three, as I have understood, include the whole tract, but I suppose their deeds will show, and also the exact dates of their purchases. I do not know whether the three deeds include the whole tract or not.

As to the possessions after the purchase from Conner, Reed, as before stated, was in possession at the date of said purchase, and has been in possession ever since. James Hanna was not in possession at the date of his purchase from Conner, as I believe, but went into possession very soon, or immediately after, and has been in possession ever since. John Butler, the father of the defendant, Thomas Butler, and David Groves tended the part of the land where Thomas Butler lives, the first year after the purchase from Conner. The next year, Groves, in the spring, was killed; his widow lived upon it the balance of that year, and tended it jointly with John Butler; and afterwards, Thomas Butler, the defendant, went into possession, and has so continued up to the beginning of the suit. It was about the time of the widow Groves's going out of possession, that Thomas Butler went in; it might have been a little before or a little after, I cannot tell exactly how, but there could not have been but a short intermission if any.

The defendant, James Hanna, was the purchaser of Conner, and went into possession about the time of said purchase, or a little after, and continued there up to the commencement of the suit. The defendant, Joseph Hanna, went into possession, some time after, of a part of the tract that was purchased by his brother, James Hanna, by permission from his brother, and has been in possession about five years up to this time.

The defendant, Wm. Collins, purchased, as I have understood, from Reed and Butler: the date of this deed, I know not; but he went into possession immediately after the purchase, and has so continued ever since.

The defendant, Willie T. Burrus, is dead: he claimed the part occupied by him at the commencement of the suit under Wm. Smith, as a purchaser at first, but not being able to comply with his contract, rescinded it, and then held as a renter, and had been in possession about a year before the suit was brought. Wm. Smith claimed under James Perry, as a purchaser, but never lived upon it. It was unoccupied from the death of Smith's purchase till Burrus entered. James Perry claimed under Richard Morris, as a purchaser, but never lived on it. I think the widow Groves lived on it while it was Perry's property, but

whether the whole time, or more than the time, or less, I am not able to say. Richard Morris claimed under Lester Morris, as a purchaser or donee, and lived upon it some two, three, or four years. He was not living on it when he sold to Perry; nor do I know whether it was vacant at that time or not. Lester Morris claimed under Reed and Butler, as a purchaser, but never lived on it: his son, Richard Morris, went on it immediately after his purchase.

Wesley Howard is a son-in-law of John Butler, and lives on a part of the land claimed by John Butler, under what kind of tenure, I know not; I think the commencement of his possession was about one year before the commencement of the suit.

In speaking of the possession—all the above named defendants who bought of Conner, I mean to confine these possessions to the bounds of their deeds respectively; and the possessions of the others, who were sub-purchasers under them, were within the bounds of their respective claims.

The line separating the lands of the Indians from those of the whites, included all the above mentioned tracts purchased or held under Gallaher, except Reid's, and nearly all of that; and they were all turned off, under the authority of the U. S., when Reed moved on the small part of his not within the Indian boundary.

(Signed) JOHN BARNETT.

Sworn to in open court, Sept. 7th, 1833.

N. A. McNAIRY, *Clk.*

[*Deposition of James Kimbro.*]

James Kimbro, a witness for the defendants, being sworn, states, that he is acquainted, and has been acquainted, with the land in controversy since the year 1810. Being further interrogated, says, at that time, old Mr. Reid, the father of the defendant, had bought 200 acres from a man by the name of Gallaher, on which he then lived, and has lived on it ever since. Mr. Reed was then living within the bounds of the deed from Gallaher to him, at which place he still resides. Being further interrogated, says, Thomas Reid, jr., the present defendant, and Jno. Butler, the father of the defendant Butler, purchased a part of the 5,000 acre tract granted to Stokeley Donelson. They have been in possession of the land conveyed to them by Conner ever since, without any interruption of the possession that witness knows of. Mr. James Hanna also bought of Conner; and he has remained in possession under his deed ever since 1821, without any interruption known to witness. Being further interrogated, says, that Wm. Collins purchased of Reed and Butler, and has held possession for the last ten years; and further says, the part on which Willie T. Burrus lived was first settled by Hamblin, who claimed under Gallaher. Hamblin lived there when I first moved into Giles county, in 1810, and continued in possession until Reed and Butler purchased of Conner; he then went out of possession, and Morris went into possession, and remained in possession a couple of years: who has held it since, he does not know. Being further interrogated, states, that Wesley Howard is a son-in-law of Butler, and understood that he resided on that part of the land purchased by Butler; since he settled on the land

he left the land in three or four years after he settled on, and moved to town. Old Mr. Butler's son, Thomas, has resided on the land purchased by his father of Conner, three or four years before he removed to Alabama, which was last winter; previous to Butler's possession, David Groves lived at the same place; he was killed, and his widow continued in possession, but whether she had left the possession before Thomas Butler took possession, witness does not know. Davy Groves claimed under Butler, as he understood, from Groves, whilst he was in possession; previous to Groves's possession the widow Cox was in possession; she was in possession when I moved into Giles county, and she continued in possession until some short time before, or after the purchase from Conner; understood from Mrs. Cox, whilst in possession, that her husband had bought of Gallaher. Being further interrogated, says, in 1810, Mr. Reed was living south of the Indian boundary line, which runs through a part of the 5000 acre tract. But, in 1811, he moved on a part of the land north of the Indian boundary. All of the possessions held under Gallaher were within the Indian boundary. Shortly after Jackson's treaty with the Indians, Mr. Reed moved back on the south side of the Indian boundary line; the Indian boundary included most part of the 200 acres bought of Gallaher. The regulars burnt Reed's possessions in 1811, which caused him to move north of the Indian boundary.

his
JAMES + KIMBRO.
mark.

Sworn to in open court, Sept. 7th, 1833.

N. A. McNAIRY, *Clk.*

And upon further argument of the question, whether the deed from Stokley Donelson to James Conner was regularly proved and registered, and whether the evidence contained in the depositions of John Barnett and James Kimbro, conduced to show the defendants purchased or claimed under Conner, the said court were divided in opinion.

[*Order for division of opinion to be certified.*]

Whereupon, on motion of the defendants, by their attorneys, and of the plantiff, by his attorneys, that these points on which the said disagreements have happened, may be stated under the direction of the judges, and certified under the seal of the court to the Supreme Court, to be finally decided. It is, therefore, ordered, that the foregoing statement of facts in relation to said disagreements, which is made under the direction of the said judges, be certified according to the request of the parties, by their counsel, respectively, and the law in that case made and provided.

(Signed.)

JOHN McLEAN, [SEAL.]
M. W. BROWN, [SEAL.]

District of west Tennessee, to wit:

I, Nathaniel A. McNairy, clerk of the circuit court of the United States for the seventh, in the district of west Tennessee,

do hereby certify that the foregoing thirty-two pages contain a complete transcript of the record and proceedings had in said court in the cause therein mentioned, (except the bill of exceptions taken during the trial of said cause, and which is not required by the parties to be inserted in this transcript.)

In testimony whereof, I have hereunto subscribed my name and affixed the seal of said court at my office in Nashville, this 21st day of October, A. D. 1834, and in the 59th year of our independence.

[SEAL.]

N. A. McNAIRY.